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Measures to eliminate international terrorism

Measures to eliminate international terrorism

Report of the Working Group

Chairman: Mr. Rohan Perera (Sri Lanka)

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I. Introduction

1. The General Assembly, in its resolution 57/27 of 19 November 2002, decided that the Ad Hoc Committee established by resolution 51/210 of 17 December 1996 should meet from 31 March to 2 April 2003 to continue the elaboration of a draft comprehensive convention on international terrorism, with appropriate time allocated to the continued consideration of outstanding issues relating to the elaboration of a draft international convention for the suppression of acts of nuclear terrorism, and that it should keep on its agenda the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations. The Assembly also decided that the work should continue, if necessary, during the fifty-eighth session of the Assembly, within the framework of a working group of the Sixth Committee. At its 29th meeting, on 2 April 2003, the Ad Hoc Committee decided to recommend that the Sixth Committee, at the fifty-eighth session of the General Assembly, consider establishing such a working group, if appropriate.[1]

2. At its 2nd meeting, on 6 October 2003, the Sixth Committee established a Working Group and elected Rohan Perera (Sri Lanka) as its Chairman. At the same meeting, the Committee decided to open the Working Group to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency.

3. The Working Group held three meetings, on 6, 8 and 10 October 2003. At its first meeting, the Working Group decided that the members of the Bureau of the Ad Hoc Committee elected at the latter's seventh session would continue to act as Friends of the Chairman during the meeting of the Working Group.

4. The Working Group had before it the report of the Ad Hoc Committee on the work of its seventh session,[2] containing, inter alia, the reports of the coordinators on the results of the informal bilateral consultations on the draft comprehensive convention on international terrorism and on the draft international convention for the suppression of acts of nuclear terrorism;[3] the report of the Ad Hoc Committee on the work of its sixth session,[4] containing, inter alia, a discussion paper prepared by the Bureau on the preamble and article 1 of the draft comprehensive convention,[5] a list of proposals made during the informal consultations on the preamble and article 1 of the draft comprehensive convention appended to the report of the coordinator on the results of the informal consultations in the Ad Hoc Committee,[6] the informal texts of articles 2 and 2 bis of the draft comprehensive convention prepared by the Coordinator,[7] the texts of articles 3 to 17 bis and 20 to 27 of the draft comprehensive convention prepared by the Friends of the Chairman[8] and two texts relating to article 18 of the draft comprehensive convention, one circulated by the Coordinator for discussion and the other proposed by the States members of the Organization of the Islamic Conference.[9] The Working Group also had before it the report of the Working Group of the Sixth Committee established at the fifty-seventh session of the General Assembly (A/C.6/57/L.9), containing in its annexes I.A and B the lists of written amendments and proposals submitted in connection with the elaboration of a draft comprehensive convention, the revised text of a draft international convention for the suppression of acts of nuclear terrorism proposed by the Friends of the Chairman (A/C.6/53/L.4, annex I) and written amendments and proposals submitted by delegations in relation to that instrument.[10]

5. Annex I.A to the present report contains a list of written amendments and proposals submitted by delegations to the Working Group of the Sixth Committee at the fifty-eighth session of the General Assembly in connection with the elaboration of a draft comprehensive convention on international terrorism.

6. Annex I.B contains a list of written amendments and proposals submitted at the sixth session of the Ad Hoc Committee in connection with the elaboration of a draft comprehensive convention on international terrorism (A/C.6/57/L.9, annex I.A).

7. Annex I.C contains a list of written amendments and proposals submitted by delegations to the Working Group of the Sixth Committee at the fifty-sixth session of the General Assembly in connection with the elaboration of a draft comprehensive convention on international terrorism (A/C.6/57/L.9, annex I.B).

8. Annex I.D contains a list of written amendments and proposals submitted by delegations to the Working Group of the Sixth Committee at the fifty-sixth session of the General Assembly in connection with the elaboration of a draft international convention for the suppression of acts of nuclear terrorism (A/C.6/57/L.9, annex I.C).

II. Proceedings of the Working Group

9. At its 1st meeting, on 6 October, the Working Group adopted its work programme and decided to proceed with discussions in informal consultations. The Chairman appointed Carlos Fernando Díaz Paniagua (Costa Rica) as the Coordinator for the draft comprehensive convention on international terrorism and Albert Hoffmann (South Africa), as the Coordinator for the draft international convention for the suppression of acts of nuclear terrorism. The Chairman also invited interested delegations to approach him on the question of convening a high-level conference, under the auspices of the United Nations, to formulate a joint organized response of the international community to terrorism in all its forms and manifestations.

10. The Chairman urged delegations to focus on ways and means of resolving outstanding issues rather than engaging in the repetition of national positions, which would not be fruitful in advancing the work at this stage. He also called upon delegations to turn their minds to new constructive approaches that would enable the Working Group to move forward to a conclusion.

11. An informal summary by the Chairman of an exchange of views that took place at the 1st and the 2nd meetings of the Working Group is contained in annex III below. The informal summary is intended for reference purposes only and not as a record of discussions.

12. On 7 October, informal consultations were held in two stages. The first, coordinated by Mr. Paniagua, was devoted to the draft comprehensive convention. In the second stage, the informal consultations coordinated by Mr. Hoffmann focused on outstanding issues pertaining to the draft international convention for the suppression of acts of nuclear terrorism. The Coordinators also held bilateral consultations on 7 and 8 October.

13. At the 2nd meeting of the Working Group, on 8 October, the Coordinators presented their oral reports on the results of the informal consultations; those reports are contained in annex II below, also for reference purposes only and not as a record of the discussions. The Chairman also informed the Working Group that in his contacts with several delegations on the question of convening a high-level conference, they had informed him that consultations on this question were continuing at a political level in their capitals. They had expressed the wish that the item be kept on the agenda in accordance with General Assembly resolution 57/27.

14. The Working Group considered and adopted its report at its 3rd meeting, on 10 October.

III. Recommendations and conclusions

15. At its 3rd meeting, the Working Group decided to refer the consideration of the present report to the Sixth Committee. The Working Group also decided, bearing in mind General Assembly resolution 57/27, to recommend to the Sixth Committee that work continue with the aim of finalizing the text of a draft comprehensive convention on international terrorism and the text of a draft international convention for the suppression of acts of nuclear terrorism, building upon the work already accomplished.

Notes

[1] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 37* (A/58/37), para. 16.

[2] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 37* (A/58/37).

[3] Ibid., annexes II.A and B.

[4] *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 37* and corrigendum (A/57/37 and Corr.1).

[5] Ibid., annex I.

[6] Ibid., annex VI, appendix.

[7] Ibid., annex II.

[8] Ibid., annex III.

[9] Ibid., annex IV.

[10] Ibid., annex V.B.

Annex I

Amendments and proposals*

A. List of written amendments and proposals submitted by delegations to the Working Group of the Sixth Committee at the fifty-eighth session of the General Assembly in connection with the elaboration of a draft comprehensive convention on international terrorism

Author	*Symbol*	*Subject*
Guatemala	A/C.6/58/WG.2/CRP.1	Article 2 ter

Proposal submitted by Guatemala (A/C.6/58/WG.2/CRP.1): additional article 2 ter

1. In any case where an offence has been committed to which both this Convention and any one of the treaties mentioned in the preamble thereof applies, the following rules shall, with respect to that offence, apply to the relations between, as the case may be:

(a) A State party to this Convention but not to that other treaty *and* a State party to that other treaty but not to this Convention, or

(b) A State party to that other treaty but not to this Convention *and* a State party to this Convention but not to that other treaty.

2. The former of the two States referred to in (a) or (b) of the preceding paragraph may notify the other in writing that, in its relations with it and in connection with the offence, it undertakes to apply, subject to reciprocity, all or certain of the substantive provisions of this Convention, if (a) applies, or of the other treaty, if (b) applies. Upon receipt by the notifying State of the acceptance of this undertaking by the State to which the notification was addressed, both States shall, in their relations with one another and with respect to the offence, be bound by all the provisions of this Convention or of the other treaty, or those specified in the notification, as the case may be.

3. Alternatively, the latter of the two States referred to in (a) or (b) of paragraph 1 above may notify the other in writing that, in its relations with it and in connection with the offence, it undertakes to apply, subject to reciprocity, all or certain of the substantive provisions of this Convention, if (a) applies, or of the other treaty, if (b) applies. Upon receipt by the notifying State of the acceptance of this undertaking by the State to which the notification was addressed, both States shall, in their relations with one another and with respect to the offence, be bound by all the provisions of this Convention or of the other treaty, or those specified in the notification as the case may be.

4. The acceptance of the undertaking under paragraph 1 above shall, upon its receipt by the State to which it is addressed, be immediately conveyed by it to the Secretary-General. If the notification was made by a State party to this Convention, the Secretary-General shall convey the acceptance to the other States parties thereto. If the notification was made by a State party to the other treaty, the Secretary-

General shall, if it is the depositary thereof, convey the acceptance to the other States parties thereto. If the Secretary-General is not the depositary of that treaty, the Secretary-General shall convey the acceptance to the depositary thereof.

Explanatory comments

5. The new article proposed, which draws inspiration from the last sentence of article 2 common to the four 1949 Geneva Conventions for the protection of victims of war, seeks to permit, encourage and, above all, facilitate the expeditious conclusion, on a bilateral and reciprocal basis, of ad hoc, inter se agreements to fill the gap that exists between two States whenever an offence is committed that is covered by both the comprehensive convention and any one of the so-called sectoral counter-terrorism treaties but one of the States is party to the latter but not to the former, or whenever the opposite is the case.

6. The reason why paragraph 2 allows a State making the notification provided for therein to choose between being bound by all the substantive provisions of the treaty to which the notification refers or only certain of them is that the need to obtain parliamentary approval may prevent it from arranging to be bound, within the time limit imposed by the circumstances, by all the provisions of the treaty.

7. Admittedly, the mechanism established by this new article is a novel one and may accordingly appear unorthodox. It is felt, however, that the mechanism, which does not seem to be incompatible with the law of treaties, is workable, minimizes complications and could thus function smoothly and usefully in practice.

B. List of written amendments and proposals submitted at the sixth session of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 in connection with the elaboration of a draft comprehensive convention on international terrorism

Author	*Symbol*	*Subject*
1. Bureau	A/57/37,[1] annex I	Discussion paper on the preamble and article 1
2. Coordinator	Ibid., annex II	Informal texts of articles 2 and 2 bis
3. Friends of the Chairman	Ibid., annex III	Texts of articles 3 to 17 bis and 20 to 27
4. Coordinator	Ibid., annex IV	Text relating to article 18
5. Member States of the Organization of the Islamic Conference	Ibid.	Text relating to article 18

[1] *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 37* and corrigendum (A/57/37 and Corr.1).

C. List of written amendments and proposals submitted by delegations to the Working Group of the Sixth Committee at the fifty-sixth session of the General Assembly in connection with the elaboration of a draft comprehensive convention on international terrorism

Author	*Symbol*[1]	*Subject*
1. Guatemala	A/C.6/56/WG.1/CRP.1 and Corr.1	Revised version of document A/C.6/56/L.2; additional article (provisionally numbered 22A)
2. Hungary	A/C.6/56/WG.1/CRP.2	Article 2
3. Friends of the Chairman	A/C.6/56/WG.1/CRP.3	Revised texts of articles 3-17, 17 bis, 20 and 22
4. Colombia	A/C.6/56/WG.1/CRP.4	New first preambular paragraph
5. —	A/C.6/56/WG.1/CRP.5 and Add.1-5	Draft report of the Working Group
6. Holy See	A/C.6/56/WG.1/CRP.6	Article 10, para. 4 bis
7. Holy See	A/C.6/56/WG.1/CRP.8	Article 12

[1] Document A/C.6/56/WG.1/CRP.7 was withdrawn.

D. List of written amendments and proposals submitted by delegations to the Working Group of the Sixth Committee at the fifty-sixth session of the General Assembly in connection with the elaboration of a draft international convention for the suppression of acts of nuclear terrorism

Author	*Symbol*	*Subject*
Mexico	A/C.6/56/WG.1/CRP.9	Article 4

Notes

[a] It is understood that further consideration will be given to these written amendments and proposals, together with all other written and oral proposals, in future discussions, including on outstanding issues.

Annex II

Reports of the Coordinators on the results of the informal consultations

A. Draft comprehensive convention on international terrorism

1. On 7 October 2003, as Coordinator for the draft comprehensive convention on terrorism, I chaired informal consultations on the draft convention, which were open to all delegations. On 8 October, I held bilateral consultations with those delegations which chose to avail themselves of that opportunity. The focus of both sets of consultations was on draft articles 18 and 2 bis.

2. The two texts relating to article 18, one circulated by the former Coordinator for discussion and the other proposed by member States of the Organization of the Islamic Conference (OIC), are contained in annex IV to the 2002 report of the Ad Hoc Committee.[a] The informal text of article 2 bis prepared by the Coordinator is contained in annex II to the same report.

Article 18

3. Draft article 18 is perceived as central to the final solution on the overall draft convention package. However, views on the article continued to be divergent, with delegations expressing their preferences for either the text by the previous Coordinator or the OIC proposal. Expressing support for the OIC proposal, some delegations emphasized that it had been presented as a compromise text, which took into account proposals made by other delegations. The Coordinator's text was described, in turn, as a result of many concessions. Some delegations said that the Coordinator's text reflected their bottom-line position.

4. In the consultations, delegations paid particular attention to paragraphs 2 and 3 of the two texts. With regard to paragraph 2, in support of the OIC formulation, it was noted that because international humanitarian law applied to the activities of all the parties in situations of foreign occupation, it was logical to exclude them from the scope of the draft convention since such law would apply.

5. On the other hand, support was expressed for paragraph 2 of the former Coordinator's text. It was pointed out that it was based on the precedent of paragraph 2 of article 19 of the International Convention for the Suppression of Terrorist Bombings. It was also noted that its terms were more precise and clear. Unlike the broader term "parties" in the OIC proposal, the term "armed forces" was well-understood and generally accepted.

6. Concerning paragraph 3, it was emphasized that it had to be understood in the context of the whole draft article. It was recalled that some delegations had moved from their initial positions to support the Coordinator's text on that understanding. Further, it was suggested that the Coordinator's text should be perceived as a choice of law provision rather than a provision that sanctioned impunity for the military forces of a State. Other rules of international law, such as those concerning the use of force and the prohibition against genocide or torture, remained applicable. It was also recalled that the language was based on paragraph 2 of article 19 of the International Convention for the Suppression of Terrorist Bombings. Moreover, the wording "in conformity with international law" contained in the OIC proposal was

considered restrictive and would convert any violation of international law into a terrorist act for purposes of the Convention.

7. On the other hand, the delegations that spoke in support of the OIC proposal stressed that activities of the military forces of a State should be carried out in accordance with the Charter of the United Nations and international law. It was noted that it is not unusual for the same conduct to be governed by different bodies of law. It was also contended that those activities of military forces which are not governed by international humanitarian law should be covered by the draft convention. Excluding such activities would be contrary to the 1994 Declaration on Measures to Eliminate International Terrorism. It was further stressed that the draft convention focused on individual responsibility and that it was without prejudice to State responsibility.

Article 2 bis

8. With regard to article 2 bis, some delegations observed that it was closely linked to article 18 and that agreement on it would be dependent on the outcome of negotiations on and the content of article 18.

9. Views on the inclusion of this article remained divergent. Some delegations viewed it as redundant since, in their view, existing international law principles were sufficient to solve any conflict. Others noted that the provision was necessary since it would clarify the relationship between the comprehensive convention and sectoral conventions. In particular, such a provision would address the conflict that could arise as a consequence of the principles *lex posterior derogat priori* and *lex specialis derogat generali*.

10. The views of delegations on the actual drafting of article 2 bis were also varied. Considering that the draft convention was intended to be comprehensive, some delegations observed that it should supersede sectoral conventions. Others pointed out that the possibility of superseding would only arise in the case of conflict. In that connection, the current article 2 bis was considered too restrictive. Yet some other delegations viewed the current draft text as correctly stating their preferred position, giving precedence to the sectoral conventions. The position was expressed that article 2 bis could benefit from some drafting modifications.

Other issues

11. On other issues, an additional proposal was made for a new article 2 ter (see annex I.A above). The sponsor delegation noted that the proposal was intended to encourage States to conclude bilateral agreements for the application of the draft convention or a sectoral convention in situations where the States concerned intended to cooperate but were not parties to the same convention. In their preliminary comments, delegations noted that the text was complicated and that the proposed provision seemed unnecessary and would bring uncertainty in treaty relations. It was also noted that more time would be required for further reflection on the proposal.

12. During the bilateral consultations, some delegations suggested technical improvements on the draft convention, such as a merger of paragraphs 1 (b) and (c) of draft article 2 or the deletion of the reference to serious damage to the environment.

13. Also in the bilateral consultations, it was pointed out that the time was ripe to consider new proposals to overcome the current impasse. In that regard, it was suggested that it might be useful for delegations to continue to consult informally on the outstanding issues during the intersessional period. The view was expressed that, in order to reach agreement, we must go beyond the drafting of texts and muster the necessary political will to advance the process further.

Concluding remarks

14. Although there was no major breakthrough, the consultations proceeded quite smoothly and in a constructive spirit. While delegations continued to reiterate their positions, it seemed clear that the fundamental difference in substance lay largely in the formulation of article 18, which in my assessment remains the key provision. Agreement on this article would facilitate agreement on other issues. The actual scope of article 2 bis needs to be further clarified in light of discussions on article 18.

15. I thank all delegations that participated actively and constructively in the consultations.

B. Draft international convention for the suppression of acts of nuclear terrorism

16. As Coordinator for the draft international convention for the suppression of acts of nuclear terrorism, I held informal consultations open to all delegations on 7 October 2003. I also held informal bilateral consultations with some delegations on the same day and made myself available for further consultations on 8 October. The consultation focused on the revised text proposed by the Friends of the Chairman in October 1998.[b]

17. As in the previous session of the Ad Hoc Committee, the objective of the consultations was to review the situation in relation to the outstanding issues and to ascertain whether a possibility of resolving the differences existed.

18. As regards the issue of the scope of application of the draft convention (draft article 4), delegations reiterated their prior positions.

19. In this context, reference was also made to the proposal by Mexico,[c] which had been discussed during previous sessions of the Ad Hoc Committee and the Working Group of the Sixth Committee.

20. On the one hand, the point was made that draft article 4 should be retained since it constituted a well-balanced provision that would allow a positive outcome to the endeavour of adopting a convention. It was noted that the intent of the process was to elaborate a law enforcement convention, which therefore should not cover the use of nuclear weapons by States, an issue dealt with by other conventions. However, according to another position, article 4, paragraph 2 should be deleted since the scope of the convention should include the activities of the armed forces of a State.

21. In that connection, some delegations reiterated their support for the proposal by Mexico. Nonetheless, the point was also made that the Mexican proposal would not cover all the concerns expressed.

22. It was also stated that the lack of agreement on the draft convention would delay concluding work on a comprehensive convention against international terrorism, as well as on the process of amending the 1979 Convention on the Physical Protection of Nuclear Material, an endeavour undertaken in Vienna.

23. On the issue of dumping radioactive material, delegations were reminded of a proposal on the matter that had been made previously (see document A/C.6/53/WG.1/CRP.33, reproduced in A/C.6/53/L.4, annex II). There was no discussion of that proposal.

24. In conclusion, the views on the outstanding issues remain divergent, yet all delegations agreed on the need to retain the important progress achieved, reflected in the current text, and on the common interest in adopting a convention in the near future.

Notes

[a] *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 37* and corrigendum (A/57/37 and Corr.1).

[b] See A/C.6/53/L.4, annex I.

[c] See *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 37* and corrigendum (A/57/37 and Corr.1), annex V.B.

Annex III

Informal summary by the Chairman of an exchange of views in the Working Group

1. During the deliberations in the Working Group, one delegation, while condemning terrorism in all its forms and manifestations, made reference to recent acts against a Member State and an elected member of the Security Council that were characterized as inconsistent with international law and a violation of State sovereignty. Furthermore, while expressing support for the work of the Working Group within its mandate, it emphasized the need for a clear definition distinguishing terrorism from the legitimate struggle of peoples against foreign occupation and alien domination.

2. In the exercise of its right of reply, another delegation expressed the view that a measured defensive response by a State should not be equated to attacks against innocent civilians, which could not be justified under any circumstances. That delegation further stressed that the focus of the Working Group should be confined to technical issues relating to the law enforcement instruments under its consideration.

3. The former delegation responded that the question of the use of force by the military forces of a State was directly related to the issues addressed in article 18 of the draft comprehensive convention.